

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

PATRICK D. LENARD, §
Movant, §
§ No. 3:20-cv-00585-B-BT
v. § No. 3:14-cr-00451-B (1)
§
UNITED STATES OF AMERICA, §
Respondent. §

**FINDINGS, CONCLUSIONS, AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Before the Court is Patrick D. Lenard's Motion to Proceed *In Forma Pauperis* on Appeal (ECF No. 17). For the reasons discussed herein, Lenard's motion should be denied.

Title 28 U.S.C. § 1915(a) sets forth the standards governing *in forma pauperis* motions. The goal of § 1915(a) is to allow access to federal courts for those parties who lack the resources to pay any of the statutory filing costs. *Prows v. Kastner*, 842 F.2d 138, 140 (5th Cir. 1988). A federal court may authorize a civil or criminal appeal by a person who provides an affidavit that includes a statement of all assets such person possesses, and he demonstrates he is unable to pay the fees or give security therefor. 28 U.S.C. § 1915(a)(1). In addition, if the person is a prisoner, he must also provide a certified copy of his inmate trust fund account statement for the six-month period immediately preceding the filing of his notice of appeal. *Id.* § 1915(a)(2). The Court must then examine the financial condition of the applicant to determine whether the payment of fees would "cause undue

financial hardship.” *Prows*, 842 F.2d at 140. “This entails a review of other demands on [an] individual [applicant’s] financial resources, including whether the expenses are discretionary or mandatory.” *Id.*

Here, on May 6, 2021, the undersigned United States magistrate judge entered findings and a recommendation that Lenard’s motion to vacate, set-aside, or correct sentence under 28 U.S.C. § 2255 be dismissed as time-barred. (ECF No. 11.) Lenard filed objections to the findings and recommendation, but they were overruled. (ECF Nos. 12, 13.) On June 1, 2021, the District Court accepted the magistrate judge’s findings and recommendation, denied a certificate of appealability, and entered judgment. (ECF Nos. 13, 14). On June 21, 2021, the Court received Lenard’s notice of appeal. (ECF No. 15.) On August 11, 2021, the Fifth Circuit Court of Appeals dismissed Lenard’s appeal, as of that date, for want of prosecution. (ECF No. 16.) The Fifth Circuit noted that Lenard failed to timely pay the filing fee. *Id.* On September 20, 2021, the Court received Lenard’s pending motion to proceed *in forma pauperis* on appeal. (ECF No. 17.) Because Lenard’s appeal has been dismissed, payment of the filing fee for his appeal has been rendered moot. Therefore, the Court should DENY Lenard’s motion for leave to proceed *in forma pauperis* on appeal.

Signed September 23, 2021.



REBECCA RUTHERFORD
UNITED STATES MAGISTRATE JUDGE

**INSTRUCTIONS FOR SERVICE AND
NOTICE OF RIGHT TO APPEAL/OBJECT**

A copy of this report and recommendation shall be served on all parties in the manner provided by law. Any party who objects to any part of this report and recommendation must file specific written objections within 14 days after being served with a copy. See 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b). To be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's report and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See Douglass v. United Services Automobile Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996), modified by statute on other grounds, 28 U.S.C. § 636(b)(1) (extending the time to file objections to 14 days).